IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 40 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

RAJENDRA K PARIKH

Appearance:

MR BB NAIK for applicant.

NOTICE SERVED for Respondent.

CORAM : MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE K.A.PUJ

Date of decision: 13/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the Revenue, the following

question of law is referred to us by the Income Tax Appellate Tribunal :

"Whether the Appellate Tribunal is right in law in confirming the view taken by the Commissioner of Income-tax (Appeals) in directing the value of the shares to be computed under Rule 1D of Wealth-Tax Rules, 1967 as interpreted by the Gujarat High Court in the case of Ashok K. Parikh (129 ITR 46) ?"

2. Our attention is drawn by the learned Standing Counsel appearing for the Revenue that the issue involved in the present Reference is similar to the issue involved in the case of Commissioner of Wealth-Tax, Gujarat-I Vs. Ashok K. Parikh, reported in 129 ITR 46. In the said case, the issue before the Court was that for the purpose of computation of the market value of the shares of M/s. Mehta Parikh & Co.Pvt.Ltd., the advance tax paid under Section 210 of the Income Tax Act, 1961, and shown on the assets side of the balance-sheet of the said Company, whether it can be deducted from the tax payable, in determining whether the provision for taxation is in excess over the tax payable with reference to the book profits in accordance with the law applicable thereto within the meaning of Cl. (ii)(e) of Expln.II to Rule ID of the Wealth-Tax Rules, 1957. After discussing the relevant provisions of Rule 1-D and also the case law on the subject, this Court has held as under :

"In our opinion, sub-cl.(a) of cl.(i) of Expln.II is intended to give a benefit to the (holders of) shares of those companies, who have been prompt in making payment of their advance tax under the provisions of the law relating to income-tax. Once having granted that benefit to such companies, the rule-making power wants to indicate in sub-cl. (e) of cl.(ii) of Expln.II that excess provision to the extent of the excess, when making the provision for taxation, other than the provision for advance tax, is to be disregarded and only the provision on the liabilities side by way of provision for taxation to the extent of the tax payable with reference to the book profits in accordance with the law applicable thereto is to be treated as part of the liabilities of the company. It is obvious that under the operative part of r. ID, the main provision, the balance-sheet of the company is

ordinarily to be taken on its face value for the purpose of arriving at the break-up value of shares on the basis of net worth. If there is any undue provision for taxation made and thus there is an inflated figure of liabilities shown by making an excess provision for taxation on the liabilities side, to the extent of the excess that provision is to be disregarded by the operation of sub-cl. (e) of cl.(ii) of Expln.II and that is sound commonsense. But because of the words "other than the amount referred to in cl. (i)(a)" occurring in parenthesis in sub-cl.(e) of cl.(ii), if any advance tax is already paid, that has not to be brought back, as the WTO and the AAC seek to do in the instant case. Sub-cl.(e) of cl.(ii) and sub-cl.(a) of cl.(i) of the rule operate in two different fields altogether. Clause (i)(a) operates in the field of actual payment of advance tax. Clause (ii)(e) operates in the field of excess provision for taxation other than the provision for taxation regarding advance tax, and it is in this light that r. ID has to be approached. In our opinion, the conclusion reached by the Tribunal was correct, though the reasoning which appealed to the Tribunal in arriving at its conclusion is different from the reasoning which has appealed to us. In arriving at its conclusion the Tribunal followed the decision of the Bombay Bench of the Tribunal in the case of WTO v. Pratap Bhogilal Bombay and Mrs. Nita M. Bhogilal Bombay (W.T.A. Nos. 143-144 (Bom) of 71-72). But, in our opinion, it is only by a process of interpretation bearing in mind the basic distinction between actual payment which is one concept and provision for certain liabilities which is another concept altogether that the two cls. (i)(a) and (ii)(e) of Expln. II to r. ID can be properly interpreted and understood, and, in our opinion, this is the only way of interpreting these two clauses of Expln.II to r. ID. Under these circumstances, it is obvious that the wealth-tax authorities were not justified in seeking to add back the amount of advance tax paid under the provisions of the income-tax law by M/s. Mehta Parikh & Co.Pvt.Ltd. for arriving at the market value on the basis of the break-up value of the shares of the company."

This Court has come to the conclusion that the Tribunal was right in coming to its conclusion that in determining

the break-up value of the shares the amount of advance tax paid by the company in the relevant year and shown in the assets' side of the balance-sheet has not to be deducted from the tax payable in determining whether the provision for taxation is in excess over the tax payable with reference to book profits in accordance with law applicable thereto.

3. Our attention is further drawn to the decision of the Hon'ble Supreme Court in the case of Bharat Hari Singhania and others Vs. Commissioner of Wealth-Tax and others, reported in 207 ITR 1, wherein the decision given by this Court in C.W.T. Vs. Ashok K. Parikh (Supra) was also considered. While deciding the question No.5, namely how are sub-clause (a) of clause (i) and sub-clause (e) of clause (ii) of Explanation-II to be read and understood, the Hon'ble Supreme court has held as under:

"Explanation II in rule 1D contains two clauses.

Clause (i) provides that two items shown as assets in the balance-sheet shall not be treated as assets for the purpose of rule 1D. Similarly, clause (ii) says that six items shown as liabilities in the balance-sheet shall not be treated as liabilities for the purpose of rule 1D. In other words, the balance-sheet of the company with the aforesaid modifications shall be the basis for working the rule. Schedule VI to the Companies Act, as already stated, prescribes the form in which the balance-sheet of a company has to be prepared. Of the four columns provided therein, columns (2) and (3) relate to liabilities and assets. The advance tax paid under section 210 of the Income-tax Act, though already paid, is shown as an asset as required by Schedule VI. Clause (i)(a) of Explanation II, however, says that it shall not be treated as an asset. To this extent, it is in favour of the assessee because the assets as shown in the balance-sheet will stand reduced to that extent. Now, clause (ii)(e) says that in case the balance-sheet specifies any amount as "provision for taxation" in the column of liabilities, the Wealth-tax Officer shall treat only that amount as a liability which is equal to the tax payable with reference to the book profits. Any excess over the said amount shall not be treated as a liability. Sub-clause (e) of clause (ii) while referring to the "amount representing provision for taxation" qualifies the said words by the

words following, viz., "other than the amount referred to in clause (i)(a)". This is as it ought to be. The amount referred to in clause (i)(a) is shown in the balance-sheet as an asset whereas clause (ii)(e) speaks of an amount shown in the balance-sheet as an asset whereas clause (ii)(e) speaks of an amount shown as a liability in the balance-sheet. Now no company would show the amount of advance tax paid, which is shown as an asset in the column relating to assets, simultaneously as a liability in the column of liabilities. The same amount cannot be shown both as an asset as well as a liability. No auditor would be a party to the preparation of such a balance-sheet. Ordinarily, therefore, there will be no occasion for the Wealth-tax Officer to rely upon the said words "other than the amount referred to in clause (i)(a)". However, if in the case of the balance-sheet of any company, the said amount of advance tax paid is also shown as a liability, i.e., if the said amount is included in the amount set apart as provision towards taxation, it would obviously have to be deleted from the column of liabilities__and this is also what the aforesaid words in clause (ii)(e) say. Clause (ii)(e) is in a sense complementary to clause (i)(a). Truly speaking, the advance tax paid is not really an asset but the proforma of balance-sheet in Schedule VI to the Companies Act requires it to be shown as such. What clause (i)(a) does is to remove the said amount from the list of assets for the purpose of rule 1D. It is then that clause (ii)(e), which speaks of liabilities, says that only that amount which is still remaining to be paid shall be treated as a liability on the valuation date. If in the provision for taxation made in the column of liabilities in the balance-sheet, the amount of advance tax already paid is again shown as a liability, it will not be treated as a liability. It must be remembered that the advance tax has already gone out of the profits and been debited in the account books of the company. This is the true function of both the sub-clauses. The situation is best explained by giving an illustration. Take a case where a company has paid Rs. 8 lakhs by way of advance tax which is shown as an asset in the balance-sheet. The company has made a provision of Rs. 15 lakhs for taxation which is shown as a liability in the balance-sheet. The Wealth-tax

> Officer estimates the tax payable on the basis of book profits at Rs. 10 lakhs. What he is asked to do by clause (ii)(e) is not to treat the excess Rs. 5 lakhs as a liability. The tax liability as arrived at by him is only Rs. 10 lakhs, but inasmuch as Rs. 8 lakhs has already been paid and only Rs. 2 lakhs remains payable, the said Rs. 2 lakhs alone will be treated as a liability on the valuation date. It must be remembered that Rs. 8 lakhs already paid is deleted from the "assets" shown in the balance-sheet. What is shown as an asset cannot at the same time be shown as a liability. This does not mean that tax liability is treated by the Wealth-tax Officer only as Rs. 2 lakhs. It is Rs. 10 lakhs. Rs. 8 lakhs has already gone out of the profits and debited in the books of the company. By reading clause (i)(a) and clause (ii)(e) together, the assessee will be getting the benefit of entire Rs. 10 lakhs but so far as the balance-sheet for the purpose of rule 1D is concerned, only Rs. 2 lakhs will be treated as a liability on the valuation date since that is the actual amount still outstanding. We do not think that if the aforesaid clauses are understood as explained herein, there is any prejudice to the assessees or to the Revenue. It indeed reflects the true situation. It is brought to our notice that the Andhra Pradesh High Court has taken a similar view in CIT v. M. Lakshmaiah [1988] 174 ITR 4 and that a similar view has also been taken by the Karnataka High Court in CWT v. N. Krishnan [1986] 162 ITR 309, and the Punjab and Haryana High Court in Ashok Kumar Oswal (Minor) v. CWT [1984] 148 ITR 620. On the other hand, the Gujarat High Court in CWT v. Ashok K. Parikh [1981] 129 ITR 46 has taken a different view which has been adopted by some other High Courts. It is enough to indicate that if the said sub-clauses are understood in the manner indicated and clarified by us, counsel for the assessees agree that they have no grievance. In this view of the matter, we do not think it necessary to deal with the opposing views of the High Courts at any length."

4. From the above decision, we are of the view that the question referred to us is required to be answered in view of the observations made by the Hon'ble Supreme Court in the case of Bharat Hari Singhania (Supra). We,

therefore, hold that the Tribunal is right in confirming the view taken by the Commissioner of Income Tax (Appeals) in directing the value of the shares to be computed under Rule 1D of the Wealth-Tax Rules, 1967, as interpreted by the Supreme Court in the case of Bharat Hari Singhania (Supra). We answer the question in affirmative, i.e., in favour of the assessee and against the Revenue.

5. The Reference is accordingly disposed of with no order as to costs.

[R.K. Abichandani, J.]

rmr. [K.A. Puj, J.]